

Residential Tenancies Tribunal

Decision 19-648-05

John. R. Cook
Adjudicator

Introduction

1. The hearing was called at 11:10 am on 01 October 2019 at the Government Service Centre, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The applicants, [REDACTED] and [REDACTED], hereinafter referred to as “landlord1” and “landlord2”, respectively, participated in the hearing. The respondent, [REDACTED], hereinafter referred to as “the tenant”, participated by teleconference.

Issues before the Tribunal

3. The landlords are seeking the following:
 - a. An order for a payment of rent in the amount of \$83.20;
 - b. An order for a payment of late fees in the amount of \$75.00;
 - c. An order for vacant possession of the rented premises.

Legislation and Policy

4. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
5. Also relevant and considered in this case are sections 7, 15, 19 and 35 of the *Residential Tenancies Act, 2018*.

Issue 1: Rent Owning - \$83.20

Relevant Submissions

The Landlords' Position

6. With their application the landlords had submitted a rental agreement (█ #1) showing that they had entered into a month-to-month tenancy with the tenant commencing 15 April 2019.
7. The rent is set at \$1050.00 per month and landlord2 stated that it was agreed that the tenant would pay a pro-rated rent of \$525.00 for April 2019.
8. The tenant's rent is paid on his behalf by the Department of Advanced Education, Skills and Labour (AESL) and landlord1 submitted into evidence 2 documents showing the payments he had received from AESL for rent for April and May 2019 (█ #2, #3). These documents show that the landlords had received 2 payments, in the amounts of \$666.80 and \$825.00, for the period from 15 April to 31 May 2019.
9. Landlord2 pointed out that the total rent for that period should have totalled \$1575.00 (\$525.00 + \$1050.00) while they only received \$1491.80, leaving the tenant with a balance of \$83.20.
10. Landlord2 stated that they were receiving the required \$1050.00 in rent from AESL from June 2019 onwards, but the balance of \$83.20 has not been paid and has been carried forward each month.
11. Landlord1 also submitted into evidence copies of messages he had sent to the tenant in which he pointed out to him that he had fallen into arrears and that they required him to pay the outstanding \$83.20.

The Tenant's Position

12. The tenant stated that besides the rental agreement submitted by the landlords at the hearing, there were also 2 other rental agreements. One of these was a hand-written document that had been drafted prior to the signing of the one submitted at the hearing. The tenant also stated that landlord1 tried to get him to sign a 3rd agreement but he refused.
13. Regarding the rental arrears, the tenant acknowledged that he had received the messages from the landlords informing him that there was a mix-up in the rent payment for May 2019 and he did not dispute their claim that the rent for that month was short by \$83.20.
14. The tenant stated that his rent is paid directly to the landlords by AESL and he has no dealings with them on that matter and he stated that he does not receive rent receipts from them showing how much had been paid on his behalf.

15. The tenant stated that he was informed by the landlords that they would be in contact with AESL about the mix-up with the rent and he claimed that he heard nothing more about that matter until he received the termination notice.
16. The tenant stated that he has since been speaking with AESL and they informed him that they would pay to the landlords the outstanding rent and will work with the landlords to ensure that he and his son are not evicted.

Analysis

17. I accept the landlords' evidence which shows that the tenant is in arrears in the amount of \$83.20. The tenant did not contest that claim.
18. As the landlords are also seeking an order for vacant possession of the rented premises, I find that they are entitled to a payment of rent to the day of the hearing and a per diem thereafter.
19. The tenant owes \$83.20 for the period ending 30 September 2019 and the landlords would have received \$1050.00 on 01 October 2019, the day of the hearing. Where the monthly rate of rent is set at \$1050.00, the daily rate comes to \$34.52 ($\$1050.00 \text{ per month} \times 12 \text{ months} = \$12,600.00 \text{ per year} \div 365 \text{ days} = \34.52 per day).

Decision

20. The landlords shall retain \$117.72 (\$83.20 owing for September 2019 and \$34.52 owing for 01 October 2019) of the \$1050.00 they had received for October 2019.
21. The tenant shall pay a daily rate of rent in the amount of \$34.52, commencing 02 October 2019 to the date the landlords obtain vacant possession of the rented premises.

Issue 2: Late fees - \$75.00

15. The landlords have assessed late fees in the amount of \$75.00.

Analysis

16. Section 15.(1) of the *Residential Tenancies Act, 2018* states:

Fee for failure to pay rent

15. (1) Where a tenant does not pay rent for a rental period within the time stated in the rental agreement, the landlord may charge the tenant a late payment fee in an amount set by the minister.

17. The minister has set the following fees:

Where a tenant has not paid the rent for a rental period within the time specified in the Rental Agreement, the landlord may assess a late payment fee not to exceed:

(a) \$5.00 for the first day the rent is in arrears, and

(b) \$2.00 for each additional day the rent remains in arrears in any consecutive number of rental payment periods to a maximum of \$75.00.

Decision

18. As the tenant has been in arrears since 02 May 2019, the landlords are entitled to an award for the maximum fee of \$75.00 set by the minister.

Issue 3: Vacant Possession of the Rented Premises

Relevant Submissions

The Landlords' Position

19. With their application, the landlords submitted a termination notice (█ #4) and landlord1 testified that he had sent a copy of that notice to the tenant by e-mail on 30 July 2019. A copy of that e-mail was submitted at the hearing (█ #5).
20. The termination notice was issued under section 19 of the *Residential Tenancies Act, 2018* and it had an effective termination date of 10 August 2019.
21. The tenant has not vacated as required and the landlords are seeking an order for vacant possession of the rented premises.

The Tenant's Position

22. The tenant acknowledged that he had received the termination notice.
23. The tenant claimed that he had not received a copy of the rental agreement he had signed and he pointed out that, according to the *Residential Tenancies Act, 2018*, he is not obliged to pay rent where he has not received a duplicate copy of the agreement.
24. The tenant also pointed out that he had assumed that the landlords had cleared up that matter with AESL and he only realized that he was still in arrears when he received the termination notice.

25. The tenant stated that he was speaking with AESL and if the landlords still want the \$83.20 they will pay it out to them.

Analysis

26. Regarding the issue of the rental agreements, no evidence was presented by the tenant to establish that there existed any rental agreement other than the one submitted at the hearing. The landlords testified that the agreement that they had submitted with their application was the only agreement they had entered into with the tenant.
27. With respect to the tenant's claim that he was not provided with a copy of the rental agreement, section 7 of the *Residential Tenancies Act, 2018* states:

Provision of rental agreement and information

7. (1) At the time a landlord and tenant enter into a rental agreement, the landlord shall provide the tenant with a copy of this Act and the regulations, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(2) Where a landlord and tenant enter into a written rental agreement, the landlord shall provide the tenant with a copy of the signed rental agreement within 10 days after it is signed, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(3) Where a landlord and tenant enter into an oral or implied rental agreement, the landlord shall provide the tenant with a written notice containing the information prescribed in the regulations within 10 days after entering into the rental agreement, and where requested by the landlord, the tenant shall sign an acknowledgement of receipt.

(4) Notwithstanding the terms of a rental agreement, where a landlord has not complied with subsection (2) or (3), the tenant's obligation to pay rent is suspended and the landlord shall not require the tenant to pay rent until the landlord complies with subsection (2) or (3).

The tenant is right to point out that if he had not been provided with a copy of the agreement, he is under no obligation to pay rent.

28. But I don't accept the tenant's assertion that he had not received a copy of that agreement. Under section 20 of the submitted agreement, Tenant Declaration and Signature, the tenant had signed his name as indication that he had read the rental agreement, that he agrees to abide by its provisions, that he had received a copy of the *Residential Tenancies Act, 2018* and that he had received a copy of the signed rental agreement. As such, the tenant's obligation to pay rent had not been suspended.

29. Section 19 of the *Residential Tenancies Act, 2018* states:

Notice where failure to pay rent

19. (1) Notwithstanding subsection 18(2) and paragraph 18(3)(b),

...

(b) where the residential premises is

(i) rented from month to month,

(ii) rented for a fixed term, or

(iii) a site for a mobile home, and

the amount of rent payable by a tenant is overdue for 5 days or more, the landlord may give the tenant notice that the rental agreement is terminated and that the tenant is required to vacate the residential premises on a specified date not less than 10 days after the notice is served on the tenant.

30. According to the testimony and evidence submitted at the hearing, on 30 July 2019 the tenant was in arrears in the amount of \$83.20 and had been in arrears since 02 May 2019.

31. The landlords did receive from AESL the regular rent payment of \$1050.00 on 01 August 2019 but this still left the tenant in arrears in the amount of \$83.20 and that amount was not paid off prior to the effective termination date of 10 August 2019.

32. As the notice meets the timeframe requirements set out in section 19 of the *Act* and as it was properly served in accordance with section 35, it is a valid notice.

Decision

33. The landlords' claim for an order for vacant possession of the rented premises succeeds.

34. The tenant shall pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

Issue 4: Hearing Expenses

35. Landlord1 submitted a receipt showing that the landlords had paid a fee of \$20.00 to file this application. As the landlords' claim has been successful, the tenant shall pay this hearing expense.

Summary of Decision

36. The landlords are entitled to the following:


- From the \$1050.00 the landlords had received from AESL on 01 October 2019, they shall retain \$212.72, determined as follows:

a) Rent Owing	\$117.72
b) Late Fees	\$75.00
c) Hearing Expenses.....	\$20.00
d) Total.....	<u>\$212.72</u>

- A payment of a daily rate of rent in the amount of \$34.52, beginning 02 October 2019 and continuing to the date the landlord obtains possession of the rental unit. That amount shall also be deducted from the payment the landlords had received from AESL on 01 October 2019.
- An order for vacant possession of the rented premises,
- The tenant shall also pay to the landlords any costs charged to the landlords by the Office of the High Sheriff should the landlords be required to have the Sheriff enforce the attached Order of Possession.

03 October 2019

Date



John R. Cook
Residential Tenancies Tribunal